

## FOR COUNCIL DECISION

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<b>ITEM NUMBER</b>	12.3
<b>SUBJECT</b>	LATE REPORT: Pre-exhibition - Planning Proposal, draft Development Control Plan and draft Planning Agreement for 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta (St John's Anglican Church) (Deferred Item)
<b>REFERENCE</b>	RZ/5/2018 - D08426967
<b>APPLICANT/S</b>	Jattca Pty Ltd
<b>OWNERS</b>	St John's Parramatta Endowment Fund
<b>REPORT OF</b>	Team Leader –Land Use Planning
<b>CSP THEME:</b>	<b>INNOVATIVE</b>

### DEVELOPMENT APPLICATIONS CONSIDERED BY SYDNEY CENTRAL CITY PLANNING PANEL Nil

### PURPOSE

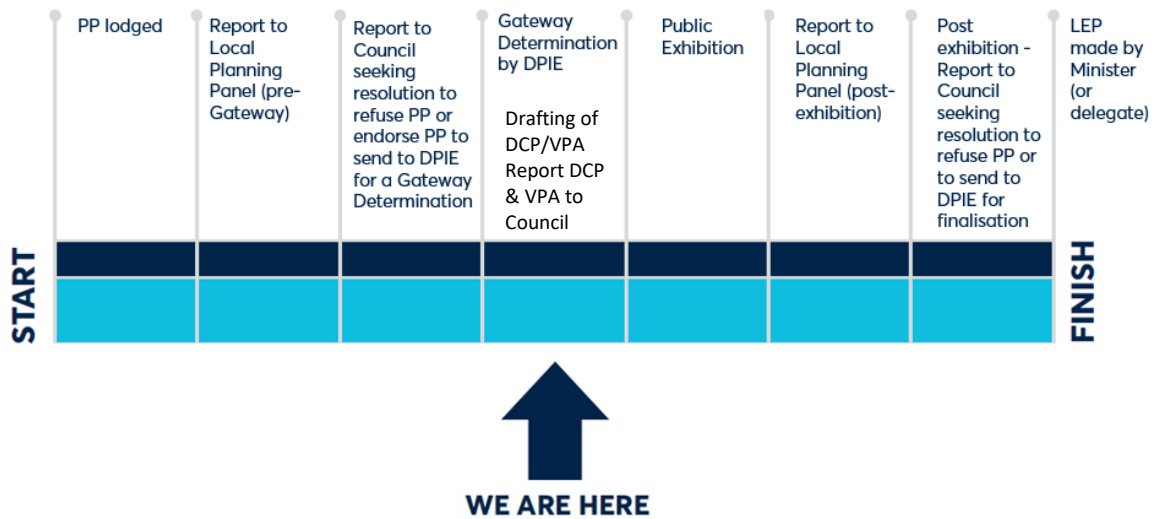
To seek Council's endorsement to publicly exhibit a draft site-specific Development Control Plan and draft Planning Agreement for land at 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta (St John's Anglican Church), in conjunction with the Planning Proposal previously endorsed by Council. The three documents together are referred to as the **Planning Scheme**.

### RECOMMENDATION

- (a) **That** Council accept the draft terms in the 'Terms Sheet of Public Benefits' dated 11 March 2022 as provided at **Attachment 1** for inclusion in the draft Planning Agreement for the St John's Anglican Church, that offers the following public benefits:
- i. Licence in perpetuity for public access to the open space surrounding the Cathedral subject to the St Johns Church maintaining the right to limit some uses on this land.
  - ii. Stratum dedication of land to enable laneway between 181 Church Street site and Marsden Street
  - iii. Temporary vehicle access for 181 Church Street site to access Hunter Street for 10 years or until the new laneway described in part ii above is available.
  - iv. Embellishment of the following land to create a civic space:
    - Church land between the Cathedral building and Hunter Street
    - Portion of road in front of 45 Hunter Street to be closed and included in the civic space but remain in Council ownership
  - v. Church to bear the maintenance and liability for the civic space site (including the Council owned portion) in perpetuity.
  - vi. Compensation of \$1.1 million for the reduction in public benefit lost due to the driveway arrangements restricting the size of the civic space and eliminating the previously proposed laneway.
  - vii. Compensation of \$3.5 million to recognise Council's risk from not having the public access recognised on the land title and accepting limitations outlined in the Church's Social Covenant and related to the Church's operational use of the land.

- (b) **That** Council delegate authority to the CEO to:
- i. negotiate and finalise the legal drafting of the Planning Agreement and associated Deed of Agreement/Licence in accordance with the 'Terms Sheet of Public Benefits' described in (a) above and place on public exhibition;
  - ii. finalise the draft site-specific Development Control Plan (DCP), as provided at **Attachment 3**, for the purpose of public exhibition, subject to further draft amendments described in the body of this report being resolved; and
  - iii. to correct any minor inconsistencies or anomalies of an administrative nature relating to the draft Planning Proposal (at **Attachment 4**), draft DCP and draft Planning Agreement documentation that may arise during their preparation exhibition.
- (c) **That** in response to the Gateway condition that requires all references to the de-listing of St John's Parish Hall as an item of local heritage significance to be removed from the Planning Proposal:-
- i. the draft Planning Proposal be amended accordingly, and
  - ii. Council requests the Department of Planning and Environment endorse amendments to the Planning Proposal to include a new site specific clause (described in detail in the Council report of 14 Feb 2021) that requires, the preparation of a DCP prior to development consent being granted to development that provides for the specific matters to be addressed with the inclusion of a note that this obligation may be satisfied by the making and approval of a concept development application (also referred to as a Stage 1 Development Application) consistent with Section 4.23 of the *Environmental Planning and Assessment Act 1979*.
- (d) **That** the Planning Scheme documents be exhibited as follows:
- i. draft Planning Proposal be exhibited for a minimum of 28 days commencing no later than 28 March 2022 in accordance with all conditions and requirements of the Gateway Determination.
  - ii. if drafting of the Draft DCP and draft Planning Agreement documentation permits, that these be exhibited concurrently with the Planning Proposal. However, should these documents not be finalised by 28 March 2022 that separate exhibition of these documents commence no later than 4 April 2022 for no less than 28 days.
- (e) **That** the outcome of the exhibition of the Planning Scheme be reported back to Council.
- (f) **Further, that** the CEO facilitate discussions with the owners of 181 Church Street, Parramatta on alternate vehicle access arrangements to this site from Hunter Street in line with the Deed of Agreement attached to the Applicant's Planning Agreement during the public exhibition period.

## PLANNING PROPOSAL TIMELINE



## BACKGROUND

1. At the Council Meeting on 21 February 2022, Council considered a report on the Planning Scheme lodged by Jattca Property Solutions (the Applicant) for the St John's Cathedral Anglican Church site.
2. The subject site contains 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta. These properties comprise of twelve (12) allotments currently owned by the Anglican Church Property Trust, Diocese of Sydney, as Trustee for the Parish of Parramatta and the St John's Parramatta Endowment Fund (see **Figure 1**).

**Figure 1:** The subject site and surrounds



3. A detailed description of the site and surrounds, including heritage items and background to the subject application is contained in the previous report to

Council dated 21 February 2022, available here: and Council Report [https://businesspapers.parracity.nsw.gov.au/Open/2022/02/OC\\_21022022\\_AG\\_N\\_720\\_AT.PDF](https://businesspapers.parracity.nsw.gov.au/Open/2022/02/OC_21022022_AG_N_720_AT.PDF) and Council Resolution [https://businesspapers.parracity.nsw.gov.au/Open/2022/02/OC\\_21022022\\_MIN\\_720.PDF](https://businesspapers.parracity.nsw.gov.au/Open/2022/02/OC_21022022_MIN_720.PDF).

4. The purpose of the 21 February 2022 Council report was to seek Council's endorsement of a decision-making process in relation to the Planning Scheme for the St John's Cathedral Anglican Church site to allow Council officers and the Applicant to continue negotiations in relation to the Planning Agreement. The Applicant's Planning Agreement as reported to Council at the meeting on 21 February 2022 was not considered acceptable because the terms of the agreement at that time;
  - i. did not outweigh the loss of a local heritage item; and
  - ii. were not consistent with the City of Parramatta Council's Planning Agreements Policy (Amendment 1) adopted by Council 26 November 2018; and
  - iii. did not include compensation for the 25% reduction in the area of the civic space.
  
5. The resolution of Council in relation to this report (Item 13.2) was:
  - (a) *That Council staff urgently write to the NSW Department of Planning and Environment (DPIE) on 22 February 2022 seeking an extension of time of up to four to six weeks.*
  - (b) *That Council defer consideration of this matter to an urgent Councillor Workshop to be held on 24 February 2022.*
  - (c) *That following the Councillor Workshop, the Chief Executive Officer and relevant Council staff meet with the applicant to discuss the matter.*
  - (d) *Further, that if the extension of time is not granted by the DPIE, that Council hold an Extraordinary Council Meeting to consider this matter. report recommended*
  
6. Consistent with the above 21 February 2022 Council resolution, the following actions were completed:
  - i. Council staff wrote to the NSW Department of Planning and Environment (the Department) on 22 February 2022 and sought an extension of time to commence public exhibition of the Planning Proposal. The Department responded on the same day with an amendment to the condition 1(b) of Gateway determination which now requires exhibition to commence by 28 March 2022. A copy of the amended Gateway is provided at **Attachment 2**.
  - ii. Briefing sessions with Councillors were held on Thursday 24 February 2022 and Wednesday 9 March 2022.
  - iii. The CEO and relevant council staff formally met with the Applicant on Tuesday 1 March 2022 and Friday 4 March 2022, and progressed negotiations via email and phone correspondence.
  - iv. An Extraordinary Council Meeting was organised for 21 March 2022 (this Council Meeting) to enable Councillors to consider the outcomes of the negotiations with the Applicant, together with relevant updates to the Planning Scheme; enabling the matter to be publicly exhibited by

28 March 2022 consistent with the Gateway (as described at part i above), if supported by Council at this Council meeting.

## PLANNING AGREEMENT

### Agreed Benefits for Inclusion in the VPA

7. Following the meeting with the Applicant on 1 March 2022, Council officers issued a draft 'Terms Sheet' to assist the Church to understand the Council's position on the planning agreement deliverables to be considered. These deliverables were based on the public benefits outlined in the 16 December 2019 Council report (Item 18.4) as well as the framework for the negotiation and assessment of the public benefits (outlined above at Paragraph (4)).
8. As a result of negotiations between Council officers and the Church, the agreed public benefits items are provided in **Attachment 1** and summarised here as follows:
  - i. Licence in perpetuity in favour of Council from the Church Trust over the open space surrounding the Cathedral on the Site including the part of Hunter Street for the purpose of public access for the community. However, this will not be recognised on the lands title instead Council will include some protections in the licence document (see **Attachment 1**).
  - ii. Stratum dedication at the rear of 45 Hunter Street for vehicle access to provide future vehicle access to 41, 43 and 45 Hunter Street and 181 Church Street (Queensland Arcade) via a laneway to Marsden Street.
  - iii. Provision of a temporary vehicle access for Queensland Arcade occupants adjacent to the Wardens Cottage (see diagram at Appendix 1 in **Attachment 1**) to expire on the earlier of 10 years or the completion of the laneway to Marsden Street to allow access to Queensland Arcade along the rear of 45, 43 and 41 Hunter Street.
  - iv. Embellishment of the following land to create a civic space:
    - Church land between the Cathedral building and Hunter Street
    - Portion of public road (Hunter Street) in front of 45 Hunter Street to be closed and included in the civic space but remain in Council ownershipwith the embellishment to include 10 mature trees and be provided in accordance with the design principles and landscape plan included in the Planning Agreement, with the final design to be endorsed as part of the Stage 1 Development Application.
  - v. Public liability insurance and maintenance by the Church of the civic space site (including land owned by Council) in perpetuity to a standard equivalent to Parramatta Square.
  - vi. Provision of a monetary contribution to fund items in Council's Local Contribution Plan in recognition of:
    - the reduced area of the civic space from that originally offered equal to \$1.1 million; and
    - the risk Council is accepting due to the public access not being legally recognised on the land title and acceptance of some limitations on public access to allow for:
      - Church beliefs (refer to **Attachment 5** – Anglican Church Social Covenant) and

- Some Church operational activities (for example, religious festivals), with the amount to be \$3.5 million (see further discussion below).
9. The amount of \$3.5 million referred to in 8(vi) above was agreed by the Church on the proviso the funds are spent on certain projects identified in the draft CBD Contributions Plan.
  10. Council Officers have indicated to the applicant that this condition may be acceptable, subject to confirmation that the Council will retain the discretion to where to apply the funds and that the funds would not be used to undertake any public domain improvements along any frontage of the Church site that would be required by standard conditions of any development approval.

### Key changes

11. The key changes to the public benefits compared to the position in the 21 February 2022 Council Report are as follows:
  - i. The language in previous Offer documents provided by the Church indicated that the Church in the future would be able to limit access at their discretion. This has been clarified with the detail being further negotiated and finalised. It had been agreed that the license drafted will permit access through and to the site, for passive recreation in perpetuity. However, the licence will also specify certain uses/activities that are not consistent with the Church's organisational beliefs/ Social Covenant (see **Attachment 5**). Specific uses the Church will not support will be listed in the licence and provisions for the Church to be able to change or add to this list are also to be included in the final document.
  - ii. A portion of Hunter Street within the expanded open space area is now to be leased to the Church, rather than purchased from Council. The layout of the basement carpark is amended to be wholly on Church owned land and not underneath Hunter Street.
  - iii. The Church is taking responsibility for maintaining the new civic space as well as the existing grassed area in perpetuity and pathways. Public liability insurance will also be provided by the Church for the existing grassed area and proposed new civic space west of the Cathedral.
  - iv. Protection of public access rights over the Church land will be via an appropriate clause in the Access Deed to ensure that any Transferee is bound by the Access Deed, so that the Council is able to secure its rights under the Access Deed. The clause is supported in principle and at the time of preparation of this report Council's legal counsel was reviewing the drafting.
  - v. Notwithstanding the above, Council must still accept a level of risk (albeit now reduced with the proposed clause described in the previous paragraph) for not having access for the community recognised on title, and that there will remain some periods when the community will be restricted due to Church functions etc. The compensation for Council accepting this level of risk is discussed previously in this report.
  - vi. The temporary vehicle access to the parking area for the Queensland Arcade adjacent to Wardens Cottage will be created and insured by the Church.

12. In summary, the offer by the Applicant is considered to provide a sufficient level of public benefit that outweighs the loss for the community of the heritage item as detailed in the 21 February 2022 Council report in the table at Paragraph 41.

### **SITE SPECIFIC DEVELOPMENT CONTROL PLAN AND PLANNING PROPOSAL**

13. As a result of the amendments to the Planning Agreement by the Applicant there are minor, consequential amendment to the site specific DCP controls, specifically resulting from the amendment to the basement layout, with the basement car park layout for the Option B: Hall retained scenario now applying to both Options A and B and being wholly located on Church owned land.
14. In addition delegation should be granted to the CEO to finalise controls on the appropriate activation of the portion of the new commercial building closest to the Cathedral. Current controls seek minimal activation for Heritage reasons but the Applicant has requested this be reconsidered as they would like to make sure they can establish a relationship between the Cathedral and their use in the podium of the new commercial building. This issue is being reconsidered given the benefits in activating the open space but should not hold off exhibition of the site specific DCP or other documents discussed in this report.
15. A detailed outline of the site specific DCP and Planning Proposal controls and discussion of issues is contained in the previous report to Council on 21 February 2022. A link to the Council Report and resolution is provided above. A copy of the draft site specific DCP and site specific PP are provided at **Attachments 3 and 4**.

### **CONSULTATION AND TIMING**

16. The following stakeholder consultation has been undertaken in relation to this matter:

<b>Date</b>	<b>Stakeholder</b>	<b>Stakeholder Comment</b>	<b>Council Officer Response</b>	<b>Responsibility</b>
1 and 4 March 2022	Applicant	Various comments in relation to finalising the draft DCP and planning agreement.	Negotiated with the Applicant	City Planning & Design / Property & Place

### **LEGAL IMPLICATIONS FOR COUNCIL**

17. As the terms of the Planning Agreement are supported in principle but could not be finalised by Council officers and the Applicant to meet the reports deadlines, it is recommended the CEO be granted delegation to endorse the draft Planning Agreement documentation for the purpose of public exhibition. This will include advice from Council's Legal Counsel on the drafting of the relevant agreements/documentation.

### **FINANCIAL IMPLICATIONS FOR COUNCIL**

18. The previous report to Council on 21 February 2022 detailed the financial implications for Council specifically a risk of Council having to purchase land at

the rear of 41, 43 and 45 Hunter Street for the laneway. Further changes/issues are as follows:

- i. The Church to maintain the civic space between Hunter and Church St in perpetuity, currently Council is liable for these costs at a cost of approximately \$108,000 per year.
- ii. A monetary contribution of \$1.1 million, and a further \$3.5 million is expected. These funds will be to used to pursue public domain improvements in Hunter Street and potentially Macquarie Street.
- iii. A separate negotiation between Council and the Applicant for the lease arrangements of the portion of Hunter Street will be reported to Council separately. It is expected that the lease will not permit the Church to undertake any commercial activities on this land and therefore it is expected the lease fee will be a nominal value, noting that the Church will be responsible for the insurance, repairs and maintenance of the space in perpetuity to a standard comparable to Parramatta Square.

19. The decision being made by Council as recommended has no immediate direct impact on the budget as the public exhibition of the Planning Scheme will be funded by the current City Planning and Design budget. It is also noted that the Planning Agreement will only be triggered if a Development Application is approved that allows the demolition of the Parish Hall.

	FY 21/22	FY 22/23	FY 23/24	FY 24/25
<b>Operating Result</b>				
External Costs				
Internal Costs				
Depreciation				
Other				
<b>Total Operating Result</b>	NIL	NIL	NIL	NIL
<b>Funding Source</b>	N/A	N/A	N/A	N/A
<b>CAPEX</b>				
CAPEX				
External				
Internal				
Other				
<b>Total CAPEX</b>	NIL	NIL	NIL	NIL
<b>Funding Source</b>	N/A	N/A	N/A	N/A

Janelle Scully  
**Team Leader –Land Use Planning**

Robert Cologna  
**Group Manager, Strategic Land Use Planning**

John Angilley  
**Chief Finance and Information Officer**

Bryan Hynes  
**Executive Director Property & Place**



Jennifer Concato

**Executive Director City Planning and Design**

Brett Newman

**Chief Executive Officer**

**ATTACHMENTS:**

- |          |   |                 |
|----------|---|-----------------|
| <b>1</b> | <b>ATTACHMENT 1 - Draft Terms Sheet PA _ St Johns - FINAL</b> | <b>6 Pages</b>  |
| <b>2</b> | <b>ATTACHMENT 2 - Gateway Alteration</b>                      | <b>2 Pages</b>  |
| <b>3</b> | <b>ATTACHMENT 3 - Draft Development Control Plan</b>          | <b>38 Pages</b> |
| <b>4</b> | <b>ATTACHMENT 4 - Planning Proposal</b>                       | <b>51 Pages</b> |
| <b>5</b> | <b>ATTACHMENT 5 - Anglican Church Social Covenants</b>        | <b>1 Page</b>   |

**REFERENCE MATERIAL**

*These are draft minutes and are subject to confirmation by Council at its next meeting. The confirmed minutes will replace this draft version on the website once confirmed.*

12.3 SUBJECT LATE REPORT: Pre-exhibition - Planning Proposal, draft Development Control Plan and draft Planning Agreement for 195 Church Street, 65-79 Macquarie Street, 38 and 45 Hunter Street, Parramatta (St John's Anglican Church) (Deferred Item)

REFERENCE RZ/5/2018 - D08426967

APPLICANT/S Jattca Pty Ltd

OWNERS St John's Parramatta Endowment Fund

REPORT OF Team Leader –Land Use Planning

3683 RESOLVED (Garrard/Pandey)

- (a) **That** Council accept the draft terms in the 'Terms Sheet of Public Benefits' dated 11 March 2022 as provided at Attachment 1 for inclusion in the draft Planning Agreement for the St John's Anglican Church, that offers the following public benefits:
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  - iii. to correct any minor inconsistencies or anomalies of an administrative nature relating to the draft Planning Proposal (at Attachment 4), draft DCP and draft Planning Agreement documentation that may arise during their preparation exhibition.
- (c) **That** in response to the Gateway condition that requires all references to the de-listing of St John's Parish Hall as an item of local heritage significance to be removed from the Planning Proposal:-
- i. the draft Planning Proposal be amended accordingly, and
  - ii. Council requests the Department of Planning and Environment endorse amendments to the Planning Proposal to include a new site specific clause (described in detail in the Council report of 21 February 2022) that requires, the preparation of a DCP prior to development consent being granted to development that provides for the specific matters to be addressed with the inclusion of a note that this obligation may be satisfied by the making and approval of a concept development application (also referred to as a Stage 1 Development Application) consistent with Section 4.23 of the *Environmental Planning and Assessment Act 1979*.
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- i. draft Planning Proposal be exhibited for a minimum of 28 days commencing no later than 28 March 2022 in accordance with all conditions and requirements of the Gateway Determination.
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- (e) **That** the outcome of the exhibition of the Planning Scheme be reported back to Council.
- (f) **Further, that** the CEO facilitate discussions with the owners of 181 Church Street, Parramatta on alternate vehicle access arrangements to this site from Hunter Street in line with the Deed of Agreement attached to the Applicant's Planning Agreement during the public exhibition period.

DIVISION            A division was called, the result being:-

AYES: Councillors Esber, Garrard, Green, Humphries, Noack, Pandey, Siviero, Valjak and Wang

NOES: Councillors Bradley, Darley, Davis, Maclean, Prociv and Wearne